PRINCIPAL AND AGENT—PURCHASE OF PRINCIPAL'S PROPERTY BY AGENT.—Plaintiff authorized defendant to sell his land; defendant made a sale to X and Y, took their note for $100 pending an investigation of the title, and gave them a receipt describing the land and containing the terms of sale. X and Y formed a syndicate to take the land; at the time set for payment of the purchase-price, the defendant, at the solicitation of Y, took the place of one who withdrew from the syndicate. The price received was the full value of the land at the time. Plaintiff seeks to set the sale aside. *Held,* this was not a purchase from the principal, and, in the absence of fraud, was valid. *Hermann* v. *Hall et al.,* (1914), 217 Fed. 947.

The plaintiff based his right to relief on the general rule that if an agent in the sale of his principal's property, purchases it himself, the sale is voidable, and may be set aside at the option of the principal. *Gardner* v. *Ogden,* 22 N. Y. 327; *Grumley* v. *Webb,* 44 Mo. 444; *Mills* v. *Goodsell,* 5 Conn. 475; *Marquam* v. *Ross,* 47 Ore. 374. Further, if the property is disposed of to a bona fide purchaser, the agent will be compelled to account not only for its value but for any profit realized, and this will be done though it may not appear that the property at the time the agent fraudulently acquired it was worth more than he paid for it. *Robertson* v. *Chapman,* 152 U. S. 673. However, while good faith requires an agent to serve alone the interest of his principal in the subject of the employment, the termination of such interest ends all duty, and leaves him free to serve himself or others, providing he has done nothing during the continuance of such interest to lay foundation for future advantage to himself at the expense of his principal's rights. *Dennison* v. *Aldrich,* 114 Mo. App. 700; *Halperin* v. *Callender,* 39 N. Y. Supp. 1044. Where the agent resigns in order to take advantage of the principal, the transaction will be set aside. *New Era Co.* v. *Shannon,* 44 Ill. App. 477. The same rule will apply where the agent has kept back any information that might have affected the action of the principal. *Prince* v. *Dupuy,* 163 Ill. 417. The purchase by an agent of the property of the principal will always be scanned by a court of equity with great suspicion. *Newcomb* v. *Brooks,* 16 W. Va. 32. The burden of establishing the utmost good faith is on the agent. *Condit* v. *Blackwell,* 22 N. J. Eq. 481; *Cook* v. *Berlin Woolen Mills Co.,* 56 Wis. 643. In *Glover* v. *Layton,* 145 Ill. 92, the court held that where an agent, in selling his principal's land, reserves no profit to himself, other than the agreed commission, and there is no arrangement made whereby he is to have any interest in the land, or in the profits to be derived in a subsequent sale by the purchaser, the fact that later, after the sale, he enters into an agreement to sell land for the purchaser, and to receive as compensation, one half of the proceeds, after deducting the original purchase money and interest, will not invalidate the sale, or authorize the original owner to set his agent's sale aside. This holding is supported by the principal case.

SALES—EFFECT OF WARRANTY IN CONDITIONAL SALES.—Plaintiff sold goods to defendant on condition that title should not pass until the purchase price had been fully paid. Later, plaintiff brought suit to foreclose his lien for the

balance due (a conditional sale of personalty being deemed an equitable lien in New York). Defendant set up, as a defense, a breach of warranty for this amount. *Held,* that this defense could not be maintained as title was not in defendant. *Hauss* v. *Savarese,* 149 N. Y. Supp. 938.

This seems to be the first case in which this exact point has been raised. It has been held that a conditional vendee cannot *bring* an action for breach of warranty until title vests in him. BENJ., SALES (Bennett's Ed.) 855; *English* v. *Hanford,* 27 N. Y. Supp. 672; *Frye* v. *Millegan,* 10 Ont. 509; *Bunday* v. *Columbus Machine Co.,* 143 Mich. 10; but it has never before been decided that he cannot set off a breach of warranty in an action for the purchase price. There is, however, some dicta upon this point. *Frye* v. *Millegan,* supra; *New Hamberg Mfg. Co.* v. *Webb,* 23 Ont. L. Rep. 44; WILLISTON, SALES, § 607.

SALES—WAIVER OF ANTICIPATORY BREACH.—Plaintiff sold a certain quantity of rubber to defendant, deliverable in installments. Before all the installments became due, defendant attempted to import into the contract certain new terms, and on their rejection by the plaintiff, refused further to perform. Plaintiff nevertheless made subsequent tenders of performance. After time for final performance plaintiff sued upon the anticipatory breach. Defendant claimed that such anticipatory breach was waived by the subsequent tenders. *Held,* that these tenders were not such a waiver. *Rubber Trading Co.* v. *Manhattan Rubber Mfg. Co.,* (1914), 150 N. Y. Supp. 17.

The tenders made by the plaintiff after breach by the defendant, were probably not sufficient to support an action for final breach. The court held merely that *such* tenders were not a waiver of the anticipatory breach. This is in accord with *Poel* v. *Brunswick etc. Co.,* 144 N. Y. Supp. 725; and *Canda* v. *Wick,* 100 N. Y. 127, holding that tender of performance after anticipatory breach does not destroy the effect of such breach, but is in conflict with. *Becker* v. *Seggie,* 124 N. Y. Supp. 116.

SURETYSHIP—ABSENCE OF PRINCIPAL'S SIGNATURE.—In an action of debt against the sureties on a town treasurer's bond, the defense was made that no liability arose on the bond because it did not bear the signature of the principal. *Held,* that since the principal was under a legal obligation to perform his official duties, absence of his signature on the bond was no defense. *Inhabitants of Boothbay Harbor* v. *Marson,* (Me. 1914), 92 Atl. 623.

This decision follows the reasoning applied in *Deering* v. *Moore,* (1894), 86 Me. 181, and is in accord with the conclusion adopted by numerous jurisdictions to the effect that although a surety is prima facie not bound unless the principal's signature appear on the contract, still it is not necessary that the bond be executed by the principal where the latter is bound to perform through an independent obligation. *Bean* v. *Parker,* 17 Mass. 591; *Ohio* v. *Bowman,* 10 Ohio 445; *Cockrill* v. *Davie,* 14 Mont. 131; *Trustees of Schools* v. *Sheik,* 119 Ill. 579; *U. S. Fid. Co.* v. *Haggart,* 163 Fed. 801; *Bunn* v. *Jetmore,* 70 Mo. 228; *Gen. Ry Signal Co.* v. *Tit. Guar. Co.,* 203 N. Y. 407; *American Surety Co.* v. *Pangburn,* (Ind.), 105 N. E. 769, 13 MICH. L. REV.